

BEFORE THE
~~DOCKET FILE COPY ORIGINAL~~
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

In re Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations

(FREDERICKSBURG ET AL., TEXAS)

and

(LLANO ET AL., TEXAS)

MB Docket No. 05-112

RM-11185, RM-11374

MB Docket No. 05-151

RM-11222, RM-11258

FILED/ACCEPTED

NOV 13 2007

Federal Communications Commission
Office of the Secretary

To: The Office of the Secretary,
for the Attention of the Assistant Chief, Audio Division, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Munbilla Broadcasting Properties, Ltd. (MBPL), by its communications counsel and pursuant to §§ 1.4(b)(1) and 1.429(f) of the Rules, hereby opposes the Petition for Reconsideration filed by Capstar TX Limited Partnership. CCB Texas Licenses, L.P., Clear Channel Licenses, Inc., and Rawhide Radio, LLC (the *Joint Parties or JPs*) in these proceedings.

I. BACKGROUND

1. On June 15, 2007, the Audio Division issued the Report and Order in these proceedings, 22 FCC Rcd 10883 (the R&O). On July 11, a summary of the R&O appeared in the Federal Register. 72 Fed. Reg. 37673. On August 10, the JPs sought reconsideration of the R&O. On October 18, Public Notice, Report No. 2838, announced the JPs' filing. On October 29, the FCC gave public notice of the JPs' filing via the Federal Register. 72 Fed. Reg. 61129.

2. The R&O dismissed the JPs' Counterproposal in the Fredericksburg proceeding and granted MBPL's Counterproposal in the Llano proceeding. The R&O did so:

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(a) because the JPs' Fredericksburg Counterproposal was fatally flawed — one of its elements, the substitution of Channel 297A for Channel 242A at Llano, Texas (the *Llano Substitution*), short spaced MBPL's Construction Permit for station KHLE; and

(b) because Linda Crawford, the petitioner in the Llano proceeding, had withdrawn her expression of interest, and because MBPL had stated a desire to serve Goldthwaite.

The R&O thus allotted Channel 297A to Goldthwaite, Texas, as MBPL had requested.

3. The JPs take issue with the R&O's dismissal of their Fredericksburg Counterproposal. To try to put behind them the short-spacing to KHLE, the JPs suggest modification of the reference point that they themselves proposed for the Llano Substitution in their Fredericksburg Counterproposal. At footnote 18, the JPs also request deletion of the Goldthwaite allotment. The JPs claim that the deletion of Goldthwaite is justified because MBPL's (since-adopted) counterproposal in Llano has no superior cut-off rights to the JP's Counterproposal in Fredericksburg. The JPs claim that the revised Llano Substitution does, "... not have any greater effect on the Goldthwaite proposal than the previously proposed coordinates."

4. The JPs also decry the fact that the FCC has accorded precedence to the KHLE CP. They claim that their Fredericksburg Counterproposal is a refiling of their Counterproposal in MM Docket 00-148 (Quanah, Texas et al.), which the Media Bureau also dismissed as fatally defective.¹ They claim that the Media Bureau had assured them, in the Quanah Memorandum Opinion and Order (the MO&O)², that, "... there would be no impediment to [their] filing a petition for rule making setting forth the technically acceptable allotment proposals originally contained in the [Quanah] Counterproposal as well as any related allotment proposals." The JPs

¹One element of the Quanah Counterproposal, a substitution at Archer City, Texas, short-spaced an earlier upgrade application filed by station KICM, Krum, Texas.

²19 FCC Red 7 159 (M.Bur 2004), app. for review pending.

claim that they have been waiting seven years for the FCC to consider their proposal on its merits. They also claim that Commission precedent justifies the grant of reconsideration.

II. ARGUMENT: RECONSIDERATION IS UNWARRANTED

5. MBPL vehemently disputes those claims. The R&O was a well-reasoned decision, wholly consistent with binding precedent. The JPs' Petition in no way demonstrates otherwise. Grant of reconsideration here would not only prejudice MBPL, it would also prejudice future applicants for the Goldthwaite allotment. Reconsideration is wholly unwarranted.

6. The JPs continue their established pattern of bending the facts beyond the breaking point to suit their position. What's more, they grossly distort the plain meaning of the Quanah MO&O. The Bureau must summarily deny the Petition for Reconsideration.

A. THE BUREAU MUST REJECT THE JPs' ATTEMPT TO AMEND THEIR COUNTERPROPOSAL

7. On September 2, 2003, MBPL applied for authority to relocate station KHLE. See File No. BPH-20030902ADU. The site change was contingent upon the ultimate fate of the JPs' Counterproposal in the Quanah proceeding, due to a 3 km short-spacing to the Llano Substitution that was one element of the JPs' Quanah Counterproposal. The Bureau had already rejected that Counterproposal³, and the JPs' Petition for Reconsideration was then pending. MBPL invoked Auburn, et al, Alabama, 18 FCC Rcd 1033 (2003), which states that a subsequently filed FM proposal need not protect a dismissed allotment proposal.

8. When the staff granted BPH-20030902ADU — nearly a year before the JPs filed in Fredericksburg — the staff appended Special Operating Conditions to the CP. One was:

³Quanah, Texas et al., 18 FCC Rcd 9495 (MB 2003) (the Quanah R&O).

The grant of this permit is conditioned on the final outcome of MM Docket 00-148. The final outcome of that proceeding may require KHL[E] to change frequency, class, or site location. Accordingly, any construction undertaken pursuant to this permit is at the permittee's sole risk. See Meridian Communications, 2 FCC Rcd 5904 (Rev. Bd. 1987).

9. MBPL accepted the CP with that condition. MBPL was (and remains) willing to bear the risk that the ultimate outcome of MM Docket No. 00-148 might require dismantlement of the KHLE facility. Accordingly, MBPL constructed the facility, and has obtained a license to cover.

10. There is no question that the JPs' Fredericksburg Counterproposal failed to protect KHLE. Indeed, the JPs claimed that they didn't have to. They painted it — wrongly — as a pending application, and claimed that it should be treated as a Fredericksburg Counterproposal. They did so despite the fact that the FCC had granted the CP nearly a year earlier, and despite the fact that, had BPH-20030902AD still been pending, it would nonetheless have been cut-off. Then, as now — again, wrongly — the JPs claimed that their Fredericksburg Counterproposal was "the same" as their rejected Quanah Counterproposal. On that basis, they tried to bootstrap their Fredericksburg Counterproposal into a position of protected status relative to BPH-20030902AD — an attempt at a complete role reversal.

11. The R&O properly rejected the JPs' absurd and outrageous claim that the JPs did not have to protect KHLE. The R&O correctly stated that BPH-20030902ADU's ultimate fate depended only upon the final outcome in Quanah. The R&O properly held that the CP was entitled to full protection from the JPs' Fredericksburg Counterproposal.

"Except for proposals being considered in MM Docket No. 00-148, the Station KHL[E] application [wa]s entitled to cut-off protection from the date it was filed from all subsequently filed rulemaking proposals and applications. [The JPs'] failure to fully protect the Station KHL[E] construction permit, at the time the MB Docket No. 05-112 Counterproposal was filed, is fatal to that... Counterproposal. The condition on the

Station KHL[E] construction permit relates only to the possibility that the Commission could grant review and reverse the outcome in MM Docket No. 00-148.”

R&O at Para. 6. [Footnotes omitted.]

12. The R&O also rightly observed that the JPs’ Fredericksburg Counterproposal was materially different from their earlier Quanah Counterproposal.

“Contrary to the assertions by the Joint Parties, the Counterproposals filed in MB Docket No. 05-112 and MM Docket No. 00-148 are not the ‘same.’ In MB Docket No. 05-112, the Joint Parties deleted the portion of their earlier Counterproposal which we found to be defective. This recasting of the dismissed Counterproposal in MM Docket No. 00-48 does not revive that dismissed proposal or create cut-off rights in MB Docket No. 05-112 that in some way relate back to the dismissed MM Docket No. 00-48 Counterproposal”.

Id. [Footnotes omitted.] Because of the impermissible short spacing to BPH-20030902AD, the R&O correctly rejected the JPs’ Fredericksburg Counterproposal.

13. It is far, far too late for the JPs to amend their Fredericksburg Counterproposal. The JPs filed in Fredericksburg on the deadline for Counterproposals — May 9, 2005, so the window to amend closed just as opened. Because the JPs filed on the deadline, and because their Counterproposal technically defective, the Fredericksburg Counterproposal was doomed.

“It is well established that counterproposals must be technically correct and substantially complete when filed and that counterproposals will be considered only if they are filed by the deadline date for comments. See Section 1.420 (d) of the Commission’s Rules, Broken Arrow and Bixby, Oklahoma, 3 FCC Rcd 6507, 6511 (1988), and Springdale, Arkansas et al., 4 FCC Rcd 674 (1989), recons., 5 FCC Rcd 1241 (1990).”

Parker, Arizona, 17 FCC Rcd 9578 (2002). This is bedrock allocations law, repeated time and time over. See, e.g., Grants and Church Rock, New Mexico, 22 FCC Rcd 9426 (M. Bur. 2007).

To allow the JPs to cure their technically defective Fredericksburg Counterproposal so long after the deadline — even after the Counterproposal’s rejection — would vitiate this crucially

important principle. To do so would strike a grievous blow to administrative efficiency and to the orderly processing of rule-making proposals.

14. What the JPs seek is, quite simply, a *do-over*, a *mulligan*. Do-overs have their place on the schoolyard during recess periods, and mulligans are fine on the links as a social lubricant among friends. However, in allocations proceedings, just as in PGA tournaments, mulligans have no place *whatsoever*. Giving to the JPs the mulligan they seek would set the FCC up for endless similar requests by others. It would also be fundamentally inconsistent with Melody Music, Inc. v. FCC, 345 F.2d 730 (DC Cir. 1965), which requires the Agency to treat similarly situated parties similarly, or to provide a rational basis for disparate treatment. Were the roles reversed, the JPs would surely protest very loudly MBPL's request for a mulligan.

15. Over the years, the FCC has rejected countless defective *ab initio* Counterproposals. The Agency did not allow any do-overs, and there's no basis for treating the JPs disparately here. After dismissals have become final, the filers of defective Counterproposals have had to start from scratch, crafting proposals within the framework of all allotments and assignments entitled to protection at the times of second filings. Ever since the staff rejected their Quannah Counterproposal, that course of action has been — and remains — available to the JPs.

16. The precedential effect of allowing the JPs a do-over would cripple the FCC's ability to efficiently process allotment proposals. Many others who have filed — or who will have filed — defective or incomplete proposals will surely clamor for their own do-overs, and even do-overs of do-overs. Indeed, as the JPs themselves have noted, in Pinewood, South Carolina, 5 FCC Red 7609 (1990), the FCC noted that, "the continuous filing of proposals without regard to

a cut-off date is not conducive to the efficient transaction of Commission business and would delay service to the public." On this basis alone, the staff must summarily deny reconsideration.

17. Reconsidering and allowing the JPs to belatedly patch yet another hole in their filings would prejudice MBPL. As Exhibit A hereto demonstrates, on July 18, 2007, MBPL applied (File No. BMPH-20070718AAJ) for a minor modification of its unbuilt permit for a new FM station on Channel 259A at Mason, Texas, Facility ID No. 165378. Specifically, MBPL seeks to shift the Mason permit to Channel 249A. MBPL filed its Mason Modification application pursuant to amended § 73.3573(a)(1)(iv), which allows MBPL to propose a shift to a same-class, nonadjacent channel via a minor-change application.

18. MBPL's Mason application short-spaces the proposed relicensing of station KLTO-FM to Converse, part of the JPs' Quanah and Fredericksburg Counterproposals. Once the Bureau issued the Fredericksburg/Llano R&O, MBPL was free to propose the channel shift at Mason by invoking the same policy as it had in filing BPH-20030902ADU — Auburn, et al, Alabama, supra. As was the case with the KHLE CP, MBPL was and is willing to run the risk that neither the FCC nor any reviewing court will overturn the Bureau's rejection of either the Quanah or Fredericksburg Counterproposals. However, no one can rationally assess the ultimate fate of a defective proposal if the FCC gives the adverse party serial opportunities to fix flaws until that party finally gets its right.

B. THE JP'S COUNTERPROPOSALS HAVE RECEIVED MORE THAN ADEQUATE CONSIDERATION

19. To hear the JPs tell the story, they have been deprived the opportunity to have their Counterproposals considered. The reality is otherwise. The Bureau carefully considered

the Quanah Counterproposal, even going so far as to seek further information. Request for Supplemental Information, 17 FCC Rcd 994 (M.M. Bur. 2002). The Bureau based its initial decision on a voluminous record, and made a very reasoned decision — that the Counterproposal was fatally defective. Quanah R&O, supra. The JPs vigorously sought reconsideration, and failed. Quanah MO&O, supra. The JPs have filed multiple pleadings both in Fredericksburg and in Llano. The staff has fully considered their arguments, and has found them wanting.

20. The JPs claim that the Bureau has lost its way and has refused to consider technically acceptable proposals that the JPs have filed both in Quanah and in Fredericksburg. That is simply untrue. Despite seven years of trying, the JPs *still* have not filed a technically acceptable proposal. If they had, the Bureau would have processed it, and if superior on § 307(b) grounds, the Bureau would have granted it. The JPs claim that the Quanah MO&O promised them the ability to refile their proposal, but the quoted language clearly contemplated the the JPs would drop their initial flawed proposal, start from scratch, and file a corrected proposal that would comply with the protection and other technical requirements in effect on the day of filing.

21. Section 1.429(b) of the Rules sets the standards for reconsideration here:

A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

- (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;
- (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or
- (3) The Commission determines that consideration of the facts relied on is required in the public interest.

According to this standard, reconsideration is unwarranted. The KHLE CP was in the data base for almost a year before the JPs filed their Fredericksburg Counterproposal, and for even longer than that as a cut-off application. The JPs mischaracterized and ignored it, apparently out of sheer ineptitude. They must reap the consequences.

22. The public interest does not warrant reconsideration. Indeed, in even seeking reconsideration, the JPs disserve the public interest. They continue to waste scarce Commission processing resources by simultaneously prosecuting fatally defective and materially different allotment proposals, all the while claiming that they are the same. The JPs tender one amendment after another in a wasteful effort to finally get it right.

23. In continuing to claim that their Counterproposals are the same, in continuing to claim that their Counterproposals are technically acceptable — all the while tendering one amendment after another to remedy flaws, the JPs are engaging in *doublethink*. In his prescient novel, *Nineteen Eighty-Four*, George Orwell described doublethink, a tool of the dictatorship that ruled Oceania, as:

The power of holding two contradictory beliefs in one's mind simultaneously, and accepting both of them To tell deliberate lies while genuinely believing in them, to forget any fact that has become inconvenient, and then, when it becomes necessary again, to draw it back from oblivion for just so long as it is needed, to deny the existence of objective reality and all the while to take account of the reality which one denies — all this is indispensably necessary. Even in using the word doublethink it is necessary to exercise doublethink. For by using the word one admits that one is tampering with reality; by a fresh act of doublethink one erases this knowledge; and so on indefinitely, with the lie always one leap ahead of the truth.

and as:

To know and not to know, to be conscious of complete truthfulness while telling carefully-constructed lies, to hold simultaneously two opinions which cancelled out, knowing them to be contradictory and believing in both of them; to use logic against logic,

... to forget whatever it was necessary to forget, then to draw it back at the moment when it was needed, and then promptly to forget it again: and above all, to apply the same process to the process itself. That was the ultimate subtlety: consciously to induce unconsciousness, and then, once again, to become unconscious of the act of hypnosis you had just performed. Even to understand the word 'doublethink' involved using doublethink.

Orwell, George (1949). *Nineteen Eighty-Four*, Martin Secker & Warburg Ltd, London, pp 35, 176-177.

24. The Joint Parties' *doublethink* notwithstanding, the Bureau has not lost its way. The Bureau got it exactly right the first time. There is no need to reconsider. Indeed, there is not even a basis on which to reconsider the Fredericksburg/Llano R&O.

III CONCLUSION

25. For the above reasons, the Bureau should deny reconsideration forthwith, and terminate the Fredericksburg and Llano proceedings.

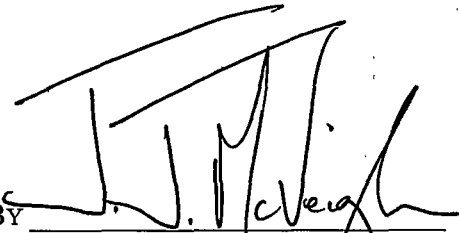
<p>JOHN JOSEPH McVEIGH, ATTORNEY AT LAW 16230 FALLS ROAD, P.O. BOX 128 BUTLER, MARYLAND 21023-0128</p> <p>TELEPHONE: 443.507.5611</p> <p>DATE: NOVEMBER 13, 2007</p>	<p>Respectfully submitted,</p> <p>MUNBILLA BROADCASTING PROPERTIES, LTD.</p> <p> BY _____ JOHN JOSEPH McVEIGH ITS COUNSEL</p>
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EXHIBIT A

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ENGINEERING STATEMENT

**IN SUPPORT OF AN OPPOSITION TO PETITION FOR RECONSIDERATION
MB DOCKET NO. 05-112
MB DOCKET NO. 05-151**

MUNBILLA BROADCASTING PROPERTIES, LTD.

11/2007

Engineering Statement
Opposition to Petition for Reconsideration in MB Dockets No. 05-112, 05-151
November 2007

This Engineering Statement has been prepared on behalf of Munbilla Broadcasting Properties, Ltd. ("Munbilla"), in support of an Opposition to Petition for Reconsideration in MB Dockets No. 05-112 and 05-151. The consolidated Report and Order in these proceedings granted Munbilla's proposal to allot Channel 297A at Goldthwaite, Texas, while denying a proposal by Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, LP, and Capstar TX Limited Partnership ("Joint Parties") to make changes at eleven communities in Texas.

The Report and Order in this proceeding was released on June 15, 2007. Subsequently, on July 18, 2007 Munbilla filed an FCC Form 301 application (FCC File No. BMPH-20070718AAJ) to modify the construction permit for its unbuilt FM station (Facility ID #165378) at Mason, Texas to operate on Channel 249A in lieu of the presently-authorized Channel 259A.

The Mason application was filed under the provisions of recent FCC rule changes which now allow an FM station to propose operation on a same-class non-adjacent channel in the form of a minor change or minor modification application.

The Mason application is short-spaced by 41 km to proposals to add Channel 249C1 at Converse for use by KLTO-FM (currently assigned to McQueeney on Channel 249C1), as advanced by the Joint Parties in MM Docket No. 00-148 and MB Docket 05-112.¹ These proposals for Channel 249C1 at Converse have both been denied. See *Quannah, et al*, MM Docket No. 00-148, Report

¹ Indicated short-spacings to proposals to delete Channel 248C at Waco and Channel 249C1 at McQueeney are moot in that the proposed Channel 249A facility at Mason is fully-spaced to the licensed operations of the Waco and McQueeney stations.

Hatfield & Dawson Consulting Engineers

and Order (May 8, 2003), and *Quanah, et al*, MM Docket No. 00-148, Memorandum Opinion and Order (April 27, 2004). Also see *Fredericksburg, Converse, Flatonia, Georgetown, Ingram, Lakeway, Lago Vista, Llano, McQueeney, Nolansville, San Antonio, and Waco Texas*, MB Docket No. 05-112, Report and Order (June 15, 2007). The Mason application was therefore filed pursuant to the policy set forth in Paragraphs 22-24 of *Auburn, et al, Alabama*, 18 FCC Rcd 1033 (2003), which states that FM proposals may rely on action taken in effective-but-not-yet-final proceedings, notwithstanding that the action taken in such proceedings is the subject of a pending administrative appeal.

Reversal of the Commission's denial of the Joint Parties' proposal in MB Docket No. 05-112 would therefore adversely affect Munbilla's proposed modification and improvement of the Mason facility.

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SEARCH PARAMETERS

FM Database Date: 071029

Channel: 249A 97.7 MHz

Page 1

Latitude: 30 42 3

Longitude: 99 13 59

Safety Zone: 32 km

Job Title: MASON 249A APPLICATION

Call Status	City St	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-True	Dist (km)	Req (km)
KGKL-FM	SAN ANGELO		248C1	100.000	31-29-46	308.5	143.06	133
LIC	TX	BLH-851101KD	97.5	125.0	100-24-50		10.06	CLEAR
DEL	WACO		248C	0.000	31-20-15	68.4	196.70	165
TX	RM-11374		97.5	0.0	097-18-37		31.70	CLEAR
KWTX-FM	WACO		248C	100.000	31-20-15	68.4	196.70	165
LIC	TX	BLH-981125KE	97.5	451.0	097-18-37		31.70	CLEAR
KWTX-FM	WACO		248C	100.000	31-20-16	68.4	196.74	165
CP MOD	TX	BMPH-981125IC	97.5	430.0	097-18-36		31.74	CLEAR
DEL	WACO		248C	0.000	30-18-27	107.1	146.20	165
TX	RM-bh-20		97.5	0.0	097-46-46		-18.80	SHORT
NOTE: SHORT-SPACING IS MOOT, AS MASON 249A IS FULLY-SPACED TO LICENSED 248C OPERATION AT WACO.								
ADD	CONVERSE		249C1	0.000	29-25-07	153.0	159.44	200
TX	RM-bh-24		97.7	0.0	098-29-02		-40.56	SHORT
ABSOLUTE MINIMUM 73.215 SPACING = 178 KM								
ADD	CONVERSE		249C1	0.000	29-25-07	153.0	159.44	200
TX	RM-11374		97.7	0.0	098-29-02		-40.56	SHORT
ABSOLUTE MINIMUM 73.215 SPACING = 178 KM								
ADD	CONVERSE		249C1	0.000	29-25-07	153.0	159.44	200
TX	RM-bh-19		97.7	0.0	098-29-02		-40.56	SHORT
ABSOLUTE MINIMUM 73.215 SPACING = 178 KM								
NEW	MASON		249A	0.000	30-42-03	0.0	0.00	115
RSV	TX	-	97.7	0.0	099-13-59		-115.00	SHORT
NEW	MASON		249A	2.400	30-42-03	0.0	0.00	115
APP	TX	BMPH-070718AAJ	97.7	160.0	099-13-59		-115.00	SHORT
DEL	MCQUEENEY		249C1	0.000	29-31-46	146.8	155.08	200
TX	RM-11374		97.7	0.0	098-21-12		-44.92	SHORT
NOTE: SHORT-SPACING IS MOOT, AS MASON 249A IS FULLY-SPACED TO LICENSED 249C1 OPERATION AT MCQUEENEY.								
DEL	MCQUEENEY		249C1	0.000	29-25-07	153.0	159.44	200
TX	RM-bh-19		97.7	0.0	098-29-02		-40.56	SHORT
NOTE: SHORT-SPACING IS MOOT, AS MASON 249A IS FULLY-SPACED TO LICENSED 249C1 OPERATION AT MCQUEENEY.								

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SEARCH PARAMETERS

FM Database Date: 071029

Channel: 249A 97.7 MHz

Page 2

Latitude: 30 42 3

Longitude: 99 13 59

Safety Zone: 32 km

Job Title: MASON 249A APPLICATION

Call Status	City St	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-True	Dist (km)	Req (km)
KLTO-FM	MCQUEENEY		249C1	100.000	29-22-11	134.0	211.49	200
CP	TX	BPH-060203ACK	97.7	299.0	097-39-44		11.49	CLEAR
RSV	TX	RM-9866	249C1	0.000	29-21-24	134.3	212.43	200
			97.7	0.0	097-39-48		12.43	CLEAR
VAC	TX	RM-10727	250C3	0.000	31-41-32	358.9	109.93	89
			97.9	0.0	099-15-17		20.93	CLEAR
ADD	TX	RM-11153	252A	0.000	30-29-00	244.4	55.83	31
			98.3	0.0	099-45-29		24.83	CLEAR

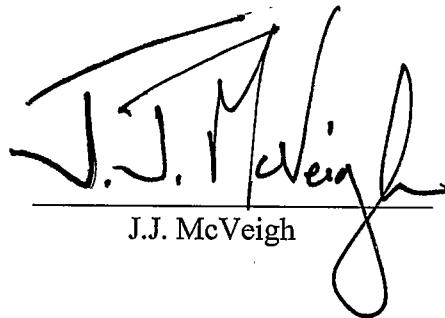
44444 END OF FM SPACING STUDY FOR CHANNEL 249 44444

CERTIFICATE OF SERVICE

I hereby certify that I have, this Thirteenth day of November, 2007, sent copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** by first-class United States mail, postage prepaid, to:

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